

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 701 OF 2003

IN

SUIT NO. 2656 OF 1993

Dr. Lalita Sequeira Plffs.

VS.

Dr. (Mrs) Cynthia Deshmukh
and ors.

.....Defnds.

S.F. Rego i/b. J.E. Rodrigues for the plffs.
Harinder Toor i/b. Lokhandwala and Co. for
the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 30th September, 2005.

P.C. :.

1. The present notice of motion is taken out by the defendant for injunction restraining the plaintiff from disposing off, transferring, alienating or creating any third party rights in respect Flat no.1, on the 11th floor, A Wing, New

Sai Niketan Housing Soccity Ltd, 345 Mount Road,
Mazagaon, Mumbai-10.

2. The undisputed facts between the parties are that the flat has ben purchased by the plaintiff in 1967 and the part of the said finance of the said flat was at that time made by the deceased during his life time. The deceased has expired on 18.1.91. The suit is filed for administration of the estate by the plaintiff in July 1993. 10 years after filing of the suit in 2003 the present Notice of Motion is taken out for injuction restraining the plaintiff from selling the flat.

3. I find no merits in the present notice of motion. Even on the aforesaid admitted fact it is clear that the title inrelation to flat is always vested with the plaintiff right from 1967. Under what arrangement part of the fund was provided by the deceased father to the plaintiff cannot be found out at present. The contention of the learned counsel for the plaintiff that the property belongs to the estate of the deceased is to be

rejected firstly because the property was never forming part of the estate of the deceased because it was never owned by the deceased nor at any point of time it was in the name of the deceased. The property is in the name of the plaintiff and thus it always belonged to the plaintiff right from 1967.

4. The further contention that because the part of the money is financed by the deceased the said property is to be treated as a part of the estate of the deceased is required to be rejected for the reason that merely because of part finance of the said property the property does not belong to the deceased. In any event by virtue of the provisions of the Benami Transactions (Prohibitions) Act 1988 the said contention cannot be accepted.

6. As long as the property stands in the name of the plaintiff as the owner thereof the question of treating the property as a part of the estate in 1991 i.e. at the time of death of the father does not arise. Furthermore I find that the motion is

taken out at a very belated stage. The deceased has expired in 1991. The suit is filed in 1993 whereas the motion is taken out in 2003 i.e. after almost 10 years thereafter. In that view of the matter I find no merits in the present matter. Motion dismissed accordingly. There shall be no order as to costs.

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